Previous references.

Legis 230 of 07-8.

1907-08

(Legislation)

File No. 16-08

Serial Nos. 18

Later references.

ch 272-16(142)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1

Part B. for December 1909

SUBJECT.

Judgment of the Chief Court in Criminal Revision Petition no. 34 of 1907-08 (Venkataramiah Chetti

---

From the Registrar Chief Court of Mysore no 3552/201 dated 20-11-07

Forwards for information of Govt copy of Judgment in the case.

G.R.S. 11]

1907. 08

GENERAL AND REVENUE SECRETARIAT.

(Legislation)

NOTES.

File No. 16.

FILE HEADING.

Judgment of the Chief Court in Criminal Revision Petition No. 34 of 1907-08 / Venkatramiah Chetty & Anr.

From

The Registrar of the Chief Court of Mysore

No. 3552 / 201. Dated 20/11/07 Received 22/11/07

Diary No. 9/1353	Enclos. one Spare Copies. -	Serial No.

BRIEF ABSTRACT OF LETTER.

Forwards for information of Government a copy of the judgment in the case.

NOTES AND ORDERS.

This is a case where one Venkatramiah Chetty, a resident of Bethamangala (within the limits of the Kolar Gold Field) was accused by the of having been in possession of a piece of raw gold weighing just under 2 rupees. The

NOTES—First sheet.

GPB—30,000—20-3-06.

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Comm^r and 1^st class magistrate convicted the accused of an offence punishable under sec 12 of the Mines Regn. Act of 1906, & sentenced him to pay a fine of Rs 50/- or in default to undergo a week's simple imprisonment. The case coming on in revision before the Chief Court, the judges Messrs Chandrasekhara Aiyar and T.V. Ramakrishnayya have acquitted the accused, on the ground that sec 12 was not applicable to this case. The judges differ as to the grounds of inapplicability of sec 12. Mr Justice Chandrasekhara Aiyar is of opinion that the provisions of the legislation which came into force on the 1st Sept 1906, cannot be held to apply to innocent possession of unwrought gold accrued long before the date of the legislation does not seem to exclude from its operation persons other than gold dealers and goldsmiths, it would be better to place the terms of sec 12 beyond all doubt and that some means may be provided to meet cases of persons in morally innocent possession of lawful gold in the mining area &c. by allowing them to make a declaration before a magistrate or other officer, without fee or on a nominal fee,

NOTE.—Contn. sheet.

GPB—50,000—17-3-07

Serial No.

whenever they came into possession of
raw gold and whenever they part with
it or have it converted into articles of
jewellery or remove it from the mining
area.

✓ Mr. Girdhar Nanjundayya in opening
their reading Sections 7, 8, 9, 10 & 12 of the Regn.
together, it does not appear that there is
any provision requiring persons to take
out licenses for the mere possession of
unwrought gold not meant for trade
The terms goldsmiths and gold-dealers, and
the provisions about the grant of licenses
to them show that the legislature could
have meant to affect only such profes-
sionals and not others, who merely happen
to possess a bit of gold with them
He is doubtful whether the term unwrought
gold" really includes such a case as the
present one, and says that, considering
the fact that it is the practice with
many natives to take raw goldsmiths
for fortune tests pieces of gold ~~whenever~~ in
getting ornaments made, which they allow
to remain unutilized for a long time, it
is unlikely that legislature would have
left such cases unprovided for, and that

NOTE.—Contn. sheet.

GPB—50,000—17-3-07

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Sec 12 was meant to be applicable to such cases. ~~If it~~ and that if the legislature intended to apply Sec 12 to these cases, it would have stated what private persons who happened to possess such gold within the prohibited area had to do, and some provisions as in Sec 11 of the Arms Regs. about their disposal or registering would have been laid down. He also thinks that the question, whether gold which has once been converted into jewellery or other articles of use or commerce can again become 'unwrought gold', when it is broken up and melted into an ingot, should be considered.

Sd/- for orders.

Reg VI of 1890 Manual Vol II. page 165

25/11/07 3 The points for consideration in this case are:—

1) What is the exact scope of Section 12? Does it apply to persons other than professional gold-dealers and goldsmiths and prohibit the possession of unwrought gold on the part of the general public?

2) Does the Regulation provide for the kind of license which should

NOTE—Contn. sheet.

GPB—50,000—17-3-07

G. R. S. 12]
General and Revenue Secretariat.

Leg File No. 16 of 1907

Serial No.

be taken by one who is in possession of unwrought gold dust who is not a gold dealer or a goldsmith? If it does not, what is the provision to be made to remedy this defect?

3) Does unwrought gold include gold which has once been converted from its native state into jewelry or other article of use or commerce and again melted into an ingot?

4 May the ~~Geo~~ file be forwarded to the Geological Secretary unofficially for favour of note on the above points?

Secy) 26.11.07.

30/11/07 Forwarded unofficially to the Geological Secretary for favour of note on the questions raised above.

2.12.07.

O.J 31
3.12.07

Lyr & Keep for D^r Sheet to return —

K.O.
K.Q
3/12/07

No. 14.

I will take the points which have been submitted to me for opinion in order

NOTE—Contn. sheet.

GPB—50,000—17-3-07

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or desirable to permit the possession of unwrought gold by persons other than goldsmiths or gold dealers such gold ~~being~~ either having been in continuous possession of such persons from a period anterior to the date on which the regulation came into force or having been obtained, subsequently to that date, by means of gift or by the melting down of wrought gold.

9 This is the first point to be settled viz whether the possession of unwrought gold by the public (i.e persons other than goldsmiths or gold dealers) shall be permitted or entirely prohibited.

10 I am of opinion that the existing Regulation clearly prohibits, and was intended to prohibit, such possession notwithstanding the doubt raised by the judgment of the Chief Court and from my point of view the only questions for decision are whether the Regulation shall be amended in respect of this point or not and what should be the nature & scope of the amendment if decided upon.

11 I am not in favour of altering the

NOTE—Contn sheet.

GPB—50,000—17-3-07

Serial No.

hoarding of their wealth. For a large extent this hoarding takes the form of accumulating articles of jewelry and comparatively little of the total amount will be in the form of unwrought gold. The intention of the existing Regulation was that such unwrought gold should either be disposed of outright, which can be done for its full value, or converted into a wrought form such as jewels be but if it is not considered desirable to force a man to dispose of the gold outright is no still less desirable to insist on his converting it into jewelry for which he may have no immediate use and which he may, later on, find occasion to reconvert into a more suitable form. I will not discuss the main question further but proceed to indicate the amendments to the Regulation which would in my opinion be necessary in order to conserve any sensible measure of utility for the protection of mining property in the event of Govt. deciding to permit possession of unwrought gold on the

GPB—50 000—17-3-07

part of the general public.

13 Suggested Amendments

Sect 3. (9) In the definition of fold-down it will be necessary to omit the words - " by possession

14 It is suggested provided a person who

get such work done by a licensed goldsmith as the section stands at present a man might melt gold without license and claim that he was not doing so "by profession" but merely privately & casually. These words should therefore be omitted

Sect 15 In consequence of the foregoing amendment it would be desirable in order to avoid ambiguity to substitute for the words "not to carry on the profession of a goldsmith" — the words — "not to engage in any goldsmiths work —

Sect. 16 If certain persons are to be permitted to be in possession of unwrought gold it will be necessary to permit them to sell it if they want to do so and therefore the words — "or sell" will have to be struck out of this section

File No. 16 of 1907

17

Sect 12. after the words any person it will be necessary to interpolate the words — "except as provided hereafter in Sects 12(a), (b)".

For the new sects. to be added I would propose the following

18

Sect. 12(a) Provided that any person who may be in legitimate possession of unwrought gold at the time this Regulation comes into force or who may, at any subsequent time, come into possession of unwrought gold by way of a legacy may be permitted to retain possession of the same under or on a Permit as provided hereafter

19

Sect 12.(b) a Permit for the possession of unwrought gold may be granted by a Magistrate of the First Class to any person of good character and reputation

M. G. D. 3

Page.

File No.

provided that the Magistrate is satisfied that the said gold has been honestly acquired and that its possession by the said person is in accordance with the provisions of this Regulation and provided also that the application for a Permit has been made without undue delay

abrogated as in sec 9.

20

Sect 12.(c) For each Permit granted a fee of — (say 8 annas) — shall be charged and a description of the gold with the weight thereof shall be entered on the Permit by the Magistrate.

21 If at any time the gold specified in the Permit is parted with or altered in any way the Permit shall be immediately returned to the issuing Magistrate who shall cancel the same or deliver it as the case may be.

2v

Sect- 12.(d). The Permits referred to in the preceding Sect. shall be in such form as Govt. may prescribe and every Magistrate shall maintain a Register of all Permits granted cancelled or altered by him

Sect 12.(e) Provided that nothing in any person, not being a licensed Goldsmith or Gold Dealer, who takes gold or gold jewels to a licensed Goldsmith for the purpose of having them melted down and converted into new Jewels may be permitted to retain a small check Samples - not exceeding half a Tola in weight - of the gold so melted down until the new jewels have been completed after which the said samples and any residue of the gold shall be at once sold or handed over to the Goldsmith who

File No. of

has done the work in part payment therefor and shall in no case be further retained by the person for whom the jewels have been made

23

The amendment above suggested will I think meet any genuine difficulties or hardships which may arise out of the existing Regulation ~~and I return the file herewith for further consideration~~

~~W. J. Ewart~~

~~2. 2. 08.~~

My earliest chance omitted to reply to questions (2) & (3) and do so now.

(2). The licences are not provided for in the existing Regulation but they will come under the head of "permits" in the proposed amendments

GBP—2,000—19-9-07

File No. of

(3) Yes most certainly. Melted up gold in the form of bars or ingots from whatever source derived is unwrought gold. I think the definition of unwrought gold in Sect 7 of the Royal Mint is quite clear on this point. An ingot of gold derived from melting up jewels would be correctly described as "unwrought or "gold bullion."

2. The file is herewith returned to the Secretary Treas. & Genl. Dept.

W. J. Ansell

2. 2. 08.

Subd

SW

5/2/08

Serial No.

Vb The file relating to the amendment of the definition of mining material" and of sec 17 as regards unemployed persons, may be put up with this, together with copies of the law on the subject in places like Transvaal &c.

7.2.08 WWS

Legue 5/2/27

The file required is submitted herewith with a copy of the Indian Mines Act VIII of 1901. The office has not been able to secure copies of Acts passed for Transvaal & other Colonies on the subject notwithstanding enquiries made there in the Geological and the Revenue offices. These are not forthcoming in this office also. Subd for further orders

WWS 29/4/08 SW 29/4/08

28 The points raised in this file and file no 23 of 1907 may conveniently be considered together.

The Mining Board requests that in view of the decision of the Chief Court in Cr. Appeal no.

NOTE—Contn sheet.

GPB—50,000—17-3-07

Serial No.

175 of 1906-07, Appellant Mahomed Hasham, all electrical fittings (including copper wire) may be included within the meaning of the definition of "mining material" given in section 3 sub section (6) of the mines Regulation. If this a request be granted, all that ~~can be~~ is necessary is to issue a notification under clause (e) of sub section (6) of section 3, declaring electrical fittings to be "mining material".

2. Section 3 - Sub-section (9). Dr Smeeth suggests that the words "by profession" be omitted in the definition of "Goldsmith". As pointed out by him, there seems to be no hardship to the public by this omission as the melting, refining and works of that kind are done generally not by laymen but by professional goldsmiths. The omission will further remove the distinction that may be drawn now between melting &c by a

GPB -50,000—17-3-07

G. R. S. 12]
General and Revenue Secretariat.

Legislative File No. 16 of 1907

Serial No.

person who is a goldsmith by profession and one who is not so, for which there seems to be no reason whatever

3. Section 7 - The proposal of Dr Sweetk to substitute the words "nor to engage in any goldsmith's work" for the words "nor to carry on the profession of a goldsmith in this section is only consequential on the proposed amendment of section 3, sub-section 9

4. Section 10 - In this connection it may perhaps be considered whether the words "at his place of business" occurring in sub sections (1) and (2) are appropriate They would indicate that it is only goldsmiths and gold dealers by profession that are required to keep the books prescribed therein and not others who occasionally purchase gold or engage in goldsmith's work - If this be what ~~was~~ is intended to provide for, the

GPB -50,000—17-3-07

sub-sections do not require any alteration. If on the other hand, every person who sells sold or engages in goldsmith's work should keep a register the words "in his place of business may perhaps be omitted. Dr Sweeth has not been consulted regarding this suggestion.

S7 Section 12. This section renders unlawful the possession of unwrought gold without a gold-dealer's or goldsmith's license. Strictly construed, the possession of such gold without the prescribed license is unlawful though the gold might have been obtained long before the passing of this Regulation. Dr Sweeth considers that to afford complete protection to mining property, the possession of unwrought gold by the general public should be absolutely prohibited. In the event however

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of Govt not accepting this view and deciding to permit possession of unwrought gold on the part of the general public, he suggests the issue of permits and has proposed the addition of some sub-section to section 12. The insertion of the words proposed by him as sub-section 12 is unobjectionable

6 Section 12 (a). The insertion of the words "by inheritance or succession or" before the words "by way of a legacy" in this section seems necessary as unwrought gold may be acquired by any of these means. The words "be permitted to" in "may be permitted to retain" seem unnecessary.

7. Sections 12 (b), 12 (c) and 12 (d). These may be recast so as to correspond as nearly as possible with sections 8 and 9 which are similar to them. I would propose the following

8 12 (b). A permit for the possession of unwrought gold

GPB—50,000—17-3-07

Serial No.

may be issued by a Magistrate of the First Class on payment of such fee as the Govt may by rule prescribe in that behalf.

5. 12 e. The permit shall be in such form as may be prescribed by Govt and shall contains a description of the gold with the weight thereof

6. If at any time the gold referred to in the permit is parted with or altered in any way, the permit shall be immediately returned to the Magistrate by whom it was issued, who shall cancel the same or alter it as the case may be.

7. A ~~Register~~ register of permits shall be maintained by every Magistrate issuing the same and all permits granted, cancelled or altered by him shall be entered therein.

8. 12 d. No permit shall be issued to any applicant unless the Magistrate is satisfied that the

NOTE—Contn sheet.

Serial No.

he is a person of good character and reputation, ~~and~~ that the gold in respect of which the application is made has been honestly acquired and its possession by the said person is in accordance with the provisions of this Regulation, and that the application for the permit has been made without undue delay.

13. Every decision under this ~~section~~ sub-section by a magistrate other than the District Magistrate shall be appealable to the district magistrate whose order shall be final.

Note. In connection with this sub-section, it may be considered whether in order to obtain a permit, it is necessary ~~that~~ the ~~he~~ to insist on the qualification ~~of~~ that the applicant should be a person of good character and reputation. The provision as regards appeal is not contained in Dr Smeeth's draft but it seems to be a necessary

GPB—50,000—17-3-07

one and is therefore inserted.

(c) 12(c) This may more aptly come next to 12 (a). Dr Smeeth suggests that the gold retained as sample should be sold or handed over to the goldsmith. It may perhaps be considered whether the owner may not be allowed to retain it on making a declaration before a magistrate. If this idea be approved, Sub-section (c) would be somewhat as follows:

"Provided also that any person not being a licensed goldsmith or gold-dealer who gets gold melted for purposes of jewelry may, on making a declaration before a magistrate, be permitted to retain a small check sample, not exceeding half a tola in weight of the gold so melted.

(d) Please type side by side Dr Smeeth's amendments and those suggested in the note above.

22.5.08. P.J.O.

May retain a permit

GPB—50 000—17-3-07

G.R.S. 12]
General and Revenue Secretariat.

Legis File No. 16 of 1907

Serial No.

16 Sec 17 To give effect to the representation of the Mining Board regarding undesirables, the words "the Gold Field" may be substituted for "such mine" after the word "quit" in the second line and the words "Gold Field" for "mine" in the sixth line.

22.5.08 WMW

29
Sd with the amendment typed as directed

NB 22/5/08 Submitted

Secy) 22.5.08 WMW

30
I think it is necessary that the section should be made clear. Even though the Chief Court acquitted the man in this case it is doubtful if the same view will be held in future cases. In the discussions about the mining Regn in the R. A Proceedings of 1906 it was observed that people would find no difficulty in possessing gold for bona fide purposes & on making a declaration of such possession before a Magte. the

NOTE—Contn. sheet

GPB—40,000—12-5-06

Serial No.

existing law does not provide for an such declaration and the object of the amendments suggested by Dr Smeeth is to make such a provision to a limited extent. Dr Smeeth interprets the Regn to absolutely prohibit possession of unwrought gold except by licensed goldsmiths & gold dealers, but it is doubtful if such a general prohibition can be enforced without undue hardship in the present state of Indian society. In his present proposals Dr Smeeth is willing to modify the rigour of the law by permitting people to possess unwrought gold obtained by inheritance or legacy on obtaining a permit therefor. I do not know if this goes far enough. It may be worth considering whether any person of good character may not be authorised to possess not more than a certain quantity of unwrought gold - say not exceeding 3 tolas - on obtaining a permit therefor. This would be just like restricting the possession of intoxicating liquors & drugs.

3\ The other amendments are not very important.

3v The inclusion of copperwire

NOTE—Contn sheet.

GPB—50,00017—3-07

Serial No.

and electrical fittings as mining material can be effected by the issue of a notn.

33 The amendment re undesirable is a simple but necessary one.

34 If the scope of the alterations are decided upon the needful draft can be easily prepared.

1852)

35 The proposed notfn in regard to copper wire may I think be approved.

7014
29/5/08

Chs
18/5/08
15/5/08

2 - As to section 12 of the Explosives Act, I am inclined to agree with the first part of the Secretary's note, & to hold that no amendment is necessary, that it will be sufficient to call attention of the local authorities to sec 12 & the necessity for any one who has un-exported old ice powder to take out a gold dealer's license. The term "old dealer" has a definite meaning attached to it in the Regulations, and there is no use in arguing out of it.

3 As to the judgment of the Chief Court in Cr. Revision Petn No 34 of 1907-08 all I can say is that I disagree with the decision. It seems to me (I

Vendor to give the powder

GPB -50,000—17-3-07

Serial No.

course with the greatest respect) that they should have upheld the conviction though the punishment might have been as nominal as they could possibly have made it -

Dewan

1.6.08

31/5-

9273

Dewan's order

To This may be circulated to the 2d Councillor and brought up before the Council.

5. 9. 08.

To Circulate

5.9.08

G. R. S. 12]
General and Revenue Secretariat.

File No. of 190

Serial No.

38 I fully agree with the 1st Councillor.

39 The object of sec 12 was to prohibit the possession of unwrought gold by the public in the Gold fields area. I was present when the Draft Regulations was discussed at a Conference consisting of the Hon'ble Mr Hemmet Mr Williams, Sir Krishnamurti, Dr. Smeeth and the Mining Board. This point was clearly brought out and emphasized. No one was to keep unwrought gold without a license. 'Gold dealer' was defined so as to include any person who buys or sells unwrought gold. The object of this

I don't recollect - Learn from Dept

NOTE—Contn sheet.

GPB—50,000—17-3-07

Serial No.

whole legislation will be defeated by the introduction of the proposed amendments in sec 12
The Mining Board will I am sure strongly oppose any such amendment Dr. Sweetts has not consulted them
The Dist Magistrate of Kolar too has not been consulted in the matter If I am not mistaken he was instructed to publish a notification inviting the attention of the public to the new sec 12 regarding unwomen sold

LD I am of the same opinion regarding the Chief Court's power as the Pt Council It will be worth while bringing the case before

NOTE—Contn sheet.

GPB—50 000—17-3-07

Serial No.

A Full bench of the Chief Court

JMN
11/12/08

Orders by
11.12.08

U1
Circulate to the present Learned Councillors 20 January

U2
Submd to 2nd Cr

CAB
23/6/09

U3 Regarding the interpretation of S. 12, it ~~is probable~~ should be taken that the opinions recorded in this note as to the real intention of Govt — that the prohibition is general — are quite right But the Chief Court was bound to interpret the language according to the accepted rules of interpretation and not according to the intention of the legislative authority in so far as such intention does not conclusively appear from the language used There is also another principle of criminal

NOTE—Contn sheet.

GPB—50 000—17-3-07

Serial No.

law involved — that penal laws should be interpreted strictly when they make acts (~~fro~~ in themselves innocent) criminal by positive legislation Whether we consider the ruling of the Chief Court right or wrong, we have to accept it as authoritative; and as is done universally elsewhere, we can only alter the law by fresh legislation ~~assuming~~ assuming that the interpretation ~~was~~ is correct. Nor can I see in what manner we can bring the question before a Full Bench There does not seem to be any provision either in the Chief Court Regulation or in the Code of Criminal Procedure under which Government can make such a reference

WH I think that the matter had best be left where the

Serial No.

decision in question leaves it, and I do not see any necessity whatever why we should take up the matter again and create uneasiness in the Public mind afresh. If further regulation is necessary, I should prefer to have an amendment of S. 12 as follows:

WS Add the following at the end of S: 12:

" Or ~~und~~ unless he can prove that he obtained possession of such gold in a lawful manner, and has given notice of such possession to a Magistrate or officer in charge of a Police Station within a month of his obtaining possession of such gold.

Wpeovid. d that persons who at the date of the passing of this Regulation are in possession of any unwrought gold

lawfully

which Public? part of the Public is already very uneasy in consequence of decision of the Court

NOTE—Contn. sheet.

GPB—50.000—13-5-08

Serial No.

may give notice of such possession within three months of the seed date.

47 "(5) Every Magistrate and every officer in charge of a police station shall keep a register in such form as may be prescribed by [illegible] and shall enter therein every notice given under this section, and on demand shall give to the person giving the notice a certified extract of such entry on payment of a fee of eight annas therefor — (or free of cost)

48 I believe this will be the best compromise between the conflicting interests. We leave it open to any person who be in possession of [illegible] only we throw on him the burden of proving that acquired it in a lawful

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No.

ners. There will be various difficulties in the way of permits being prescribed. Wrought gold (e.g.) is a thing that cannot be well identified; and a person who has a permit for a seer may deal with many seers under it, if he successively disposes of them. The alteration suggested by me leaves it to him to acquire the protection given by the ~~to~~ Regulation, and would act more automatically.

19 I see no objection to a notification declaring Copper wire &c to be running property.

20 S. 17 seems to me to be already a stringent enough provision. I should rather like to see it rigorously applied. Thus for example

GPB—50,000—13-5-08

Serial No.

while it may be reasonable to prohibit a man Considered undesirable from taking up his abode in a particular locality it may be harsh to say (as has been said in such cases often) that he may not ~~go~~ pass the place on his way ~~from~~ between two unprohibited places, or that he should not set foot there either to see a relative or to demand ~~or~~ a debt due.

51 At any rate, I do not think it expedient that a private person like a Superintendent of a mine should be allowed to exercise any such authority as this — in very exceptional cases even for a public officer — beyond the limits of the mine under his Control. If such a ~~law~~ power is neces-

GPB—50,000—18-5-08

Serial No.

say at all, it should be conferred only on a Magistrate.

7/9/09

Dewan)

1521/7.7.09 — 7/7/09

To the Geological Secretary for further remarks if any in the light of the experience gained since the date of the original reference —

2 Aug 09

2/8/09

Rpr d 24/8/09

2027 d 3-9-09.

I don't think I have anything further to say. My opinion is still that it would be unwise to alter the Regulation and that the possession of unwrought gold should be absolutely prohibited except under cover of a gold smith's or gold dealer's license. I cannot

MYSORE GEOL. DEPT. Reg. No. 419. 24 AUG. 1909 BANGALORE.

NOTE—Contn. sheet.

think that there is any real hardship in prohibiting private persons from procuring uncoined gold or sufficient justification for causing Govt. all the worry, expense and supervision which would result from the grant of permits to for persons. Such permits would undoubtedly afford a cover for illicit handling of uncoined gold and would tend to defeat the object of the Regulation. A notification should issue giving all persons residing within the area to which the Regulation applies some time - say 3 months - in which to dispose of any uncoined gold they possess either by sale to a licensed dealer or by getting it converted to jewels or exchanged for sovereigns. As to the small cheque pieces which people said to want to retain when they take jewels for a foldsmith to be worked

up. Think a great deal too much has been made. A private person who retained such a check piece could have to prove that it was the same check piece before he could use it as evidence against the defendants and I don't see how he is going to do this. The argument as to the necessity for such check pieces is very feeble and I doubt if the practice is customary. If a check piece is required it would be much more satisfactory that it should be properly sealed up and kept in possession of the defendants and this would be in accordance with the existing regulations

54 Submitted to the Department.

Surveyor General

2320/4-9-09 55

The matter may be over for the present

29 Dec 09

Secy., Geol. Dept.

31.8.09

3.9.

SD 31/1/10

No. 3554 Rev.
201

Bangalore, 20th November
20

From

S. A. Kanakatha Mudaliar Esqr.
Registrar, Chief Court of Mysore

To

C. S. Balasundaram Ayyar Esqr.
Offg. Secretary to Government,
General & Revenue Depts

Legis,
21/11/07

Sir,

I am directed to forward for the information of Government Copy of the order of this Court in Criminal Revision Petition no. 34 of 1907-8

I have the honor to be
Sir
Your most obedient servant,

S. A. Kanakatha Mudaliar
Registrar

In the Chief Court of Mysore at Bangalore

Wednesday, the 13th day of November 1907

Present.

Mr Justice H.V. Nanjundayya, Offg. Chief Judge,

and

Mr Justice K.S. Chandrasekhara Aiyar, Offg. Judge

Criminal Revision Petition No.34 of 1907-8.

Venkataramiah Chetty ..... Petitioner Appellant ..... Accused.

(By Mr. C. Krishna Murthi)

Vs.

Government ..... Counter-petitioner ..... Complainant.

(By Mr. S. Narain Rao, Govt. Advocate)

Criminal Revision Petition praying that the records in criminal case No.32 of 1907-8 on the file of the Assistant Commissioner and 1st class Magistrate, Kolar-Gold-Fields, may be cal, for and revised.

This revision petition coming on for hearing on Wednesday the 9th day of October 1907, the court pronounced the following

Order

Mr Justice K.S. Chandrasekhara Aiyar :- The facts of this case are undisputed. The petitioner Venkataramiah Chetty is a well-to-do-man, resident at Bethamangala (within the limits of Kolar-Gold-Fields), and paying an annual assessment of Rs150 to Government. The police searched his house on the 12th July 1907 and found in his iron safe. amongst a quantity of jewellery, a piece of bar gold weighing just under two rupees. It is in evidence that this piece of gold was a remnant of certain old articles of jewellery that he had had melted down some 5 or 6 years ago prior to converting them into other ornaments.

On these ~~points~~ facts the Assistant Commissioner & First Class Magistrate of the Kolar-Gold-Fields has convicted the petitioner

tion is also inserted, is one of such additional provisions; and section 16 is enacted with the object of rendering it easier for the Prosecution to prove such possession by raising an exceptional presumption against 'the tenant or occupier or reputed -- tenant or occupier' of the premises where unwrought gold ~~if~~ is found so as to throw on him the burden of proving that he was not actually in possession of the article. This provision is more -- stringent than that which concerns the possession of mining materials (section 8, old Regulation; section 6 new Regulation), which allows the accused to prove that possession was obtained in a lawful manner. If the intention of the Legislature was not to make possession itself, no matter how or when obtained, illega a similar rider would have been inserted in section 12. On - these grounds, I am inclined to hold that possession ~~from~~ even when continuous from before the passing of this Regulation is within the purview of section 12.

But I think that this section cannot be applied to the ac- used in this case as he is neither a gold-smith nor a gold deal -er. This point is discussed by Mr. Justice Chandrasekhara Aiyar who never finds it unnecessary to come to a definite conclusion on it. If the provision about possession is construed to apply to all cases, it is likely to lead to various absurd consequences. In the first place the Legislature would have stated what private persons who happened to possess pieces of such gold within the prohibited area had to do. They might have inserted provisions about disposing of such articles within a fixed time, or registering the fact of their being already in possession at the time of the enforcement of the Regulation with some public authority, somewhat like section 11 of the Arms Regulation. Some provision could have been made to give licenses certificates without fee or only - th a nominal fee for such persons who are not gold-smiths or dealers, for it would be unreasonable to require that a man possessing a piece worth Rs.10 should take out a license under - he assumed character of a gold-smith or a gold dealer by paying

interpreting a statute as to the effects

of an offence under section 12 of the Mysore Mines Regulatio 1906, and sentenced him under section 13 to pay a fine of or in default to suffer one week's simple imprisonment.

I am of opinion that the conviction is erroneous and c be supported.

It is one of the cardinal rules of interpretation that actments which would prejudicially affect the legal charac past transactions should as far as possible be construed ating only on cases or facts which have come into existen the enactments were passed, unless a retrospective effect be clearly intended. " Every statute, it has been said, which away or impairs vested rights acquired under existing creates a new obligation, or imposes a new duty, or atta new disability in respect of transactions or considera ready past, must be presumed, out of respect to the Leg to be intended not to have a retrospective operation " Maxwell's Interpretation of Statutes, 4th edition, page Broom's Legal Maxims, 6th edition, page 28, in both of treatises numerous instances are given of the applica rule that no statute shall be construed so as to pective operation, unless such a construction appears -ly in the p terms of the statute, or arises by neces distinct implication.

The Mysore Mines Regulation only came into effe 1st of September 1906, whereas the possession whic to punish under sections 12 & 13 thereof originat previously. There is no express indication in the tion 12 that the legislature meant the prohibition con therein to apply to possession of unwrought gold which accrued prior to the passing of the Regulation; nor any such necessary end distinct implication arising terms as should compel us to accept an interpretatio

" It clearly is not within the object, which the Legislature had in view, and although it may be within the literal meaning of the words, taken by themselves, we must not give to them a ~~construction~~ construction which will not only be contrary to the general intention of the Legislature, but which will lead to this absurd consequence, that a party who might at the last moment of the day on the 1st of February lawfully kill a partridge or pheasant, would be guilty of an offence by having the same partridge or pheasant in his possession at the earliest moment of the second." Littledale J. expressed himself to the same effect adding that " the meaning of the words in the enacting clause must be restrained in construction to such birds as are killed subsequently to the period specified." So also Patteson J, who remarked : " It would be absurd to say that a party who kills the game within the time when he may lawfully do so must consume it all upon the last day."

On the analogy of the above dicta, I would hold that the object of the Legislature being to afford a proper measure of protection to mining property, by reason of its being often difficult of identification as belonging to a particular mining proprietor, a provision made with that object must receive a just and reasonable construction, and that it would be absurd to say that a party who has been in innocent possession, for four years prior to 1st September 1906, of unwrought gold proved clearly to belong to him, must be guilty of an unlawful act e[illegible]eping the same gold in his possession on the 1st September 1906 & thereaft It is no less absurd, in my opinion, to suggest that such a man, if he wishes to avoid punishment, should remove the gold as far as he can out of the limits of the mining area or otherwise get rid of it simultaneously with the passing of the new Mysore Regulation.

But then it may be asked, why should not such a man lega

his possession of the gold by taking out a license ? The matter is not so easy as it would seem at first sight. The Regulation contemplates only two kinds of licenses, one for gold-smiths and another for gold dealers. It does not provide a third kind for persons who being neither gold-smiths nor gold dealers, yet, like most well-to-do-natives of India happen to possess remnants of melted gold at some time or other. The prohibition in section 12 to the effect that "it shall not be lawful for any person to have in his possession any unwrought gold unless he holds a gold dealer's license or a gold-smith's license" does not necessarily imply that any person is qualified or entitled to obtain a license of either kind. Having regard to section 7, which indicates the classes of persons on whom it is obligatory to provide themselves with gold-smiths' & gold dealers' licenses, it appears to me rather that these licenses are intended exclusively for classes of persons specified and for no others. The facts that the licenses are renewable periodically, and are obtainable only on payment of an annual fee, (.25 in the case of gold-dealers and .5 in the case of gold-smiths) and that too at the absolute discretion of the Magistrate concerned, and involve the maintenance of registers showing the periodical dealings of the holders, are further circumstances pointing to the same conclusion.

Further, even if we assumed that other persons than gold-smiths and gold dealers were eligible for such licenses, the application for and the issue of a license necessarily take some time, and on the extreme view that section 12 applies retrospectively to persons in possession of unwrought gold from before November 1906, we

only promulgated in July 1907 in a notification of Government which came into effect from the 1st of August following so that the interval not covered by a license must necessarily be somewhat considerable in every case.

There is another important point affecting the construction of section 12 on which I may as well say a few words here, since it was one raised ~~by myself~~ at the hearing of this revision petition, and has a close connection with the view I have taken as regards the scope of the licenses prescribed by section 7. I have held that such licenses are only intended for "gold-smiths" and "gold dealers" as these expressions are defined in clauses (8) & (9) of section 3, and that all other persons whatsoever who do not come under these definitions are ineligible for such licenses. If this be so, the question necessarily arises, what is the exact scope of section 12, which says that "it shall not be lawful for <u>any person</u> to have in his possession any unwrought gold unless he holds a gold dealer's license or a gold smith's license or unless he is a mining proprietor or duly accredited person acting on behalf of a mining proprietor." Is the effect of the section to altogether prohibit the possession of unwrought gold on the part of the general public who are debarred from taking out gold-smith's and gold dealer's licenses ? This would be so if we regarded the section to be of such wide and general application as the use of the words "any person" therein would imply. The words of the section are in themselves unambiguous, and it may be said that we are bound to give effect to them irrespective of consequences and of our individual opinions as to the nature of such consequences.

On the other hand, it may with some show of reason be argue that if the Legislature really meant that the general public -- should not be permitted to possess unwrought gold within the -- mining area, it would have enacted this in plain terms, instead

of leaving it to be inferred from a general section requiring - that all possession should be covered by a license, which, at the same time, is clearly not intended for those who are neither -- gold-smiths nor gold dealers. The fact that no separate provision is made to meet the case of such persons may be regarded as an indication that their case does not fall within the scope of the prohibition. There are, however certain difficulties in the way of the acceptance of this view. If it was intended by section 12 to prohibit unlicensed possession solely on the part of the gold-smiths & gold dealers, the section should have provided that "it shall not be lawful for any gold dealer or gold-smith to have in his possession any unwrought gold unless he -- holds a gold dealer's license or a gold-smith's license, as the case may be ". But such a provision would be entirely superfluous since if a man cannot even be, or carry on work as. a gold dealer or a gold-smith without a license, a fortiori he cannot possess unwrought gold in that capacity without a license. The mention of mining proprietors and their agents is also apparently against it may be said the view that the operation of section 12 should be confined to gold-smiths and gold dealers.

The point is a somewhat difficult one; but in view of the opinion which I have already expressed that the Regulation does not apply to cases of possession of unwrought gold accruing be- the passing of the Mysore Mines Regulation but continuing thereafter, it is needless for me to decide the point in this - case. It is however to be hoped that a question which involves such serious consequences to the general public will receive the early consideration of the Legislature with a view to placing - the terms of the section beyond doubt, and that, if need be, some means may be provided to meet the case of persons in morally innocent possession of bar gold in the mining area, as, for instance by allowing any such person to make a declaration before a Magistrate or other officer, without fee or on a nominal fee, whenever

e comes into possession of the bar gold and whenever he parts with it or has it converted into articles of jewellery or remove it from the mining area.

In the case now before us, I consider that the possession by the petitioner of the piece of gold found with him is not punishable under sections 12 & 13 of the Mysore Mines Regulation. I would set aside the conviction and sentence, and direct that the fine, if levied, be refunded. // The confiscation of the bar of gold was also illegal, as this is not a mode of disposal of property warranted by section 517 of the Code of Criminal Procedure. (Vide the decision of this Court in Criminal Appeal No.42 of 1907-8). This order must therefore be set s aside as well, and the article directed to be returned to the petitioner.

Offg. Judge.

The Offg. Chief Judge :- The Magistrate has accepted the account given by the accused as true. The piece of gold seized in his safe was what he had lawfully in his possession for some years before the passing of the Mines Regulation of 1906. Section 12 make it unlawful "for any person" to have any unwrought gold in his possession. A law which makes a morally innocent act an offence should no doubt be interpreted strictly, but if the meaning and intention of the Legislature is clear, we cannot nullify it by adopting a liberal interpretation so as to be more in harmony with our ethical notions.

Two English cases are mentioned in Maxwell's book of Interpretation to show that retrospective operation cannot be given [illegible] R.V. Nowell [illegible] the natives found in the [illegible] taken before the kidnapping Act of [illegible] was engaged in the same continuous

voyage when seized by the officer commanding Her Majesty's ship, it was held that the owner of the brig who sought to recover damages for unlawful seizure and detention, had not committed an offence. This was decided only as a side issue, as the plaintif was non-suited on other grounds. Its principle cannot be applic to the case before us, as it was found therein that the Aurora which could not obtain the license when the voyage began, was never within the jurisdiction of the Governor of any Australian colony or Consular Officer competent to grant a license before the seizure. It was also found that the Captin was by agreement bound to land these men at the end of the voyage at their own places and was in fact going for that very purpose. In this cas there was no impediment whatever to the accused either obtaining a license (if he could obtain one otherwise) or to his disposing of the gold and getting rid of his possession.

on the authority Simpson vs Unwin (37 Revised Repts 359

The passage given in Maxwell's book (page 347) does not seem to be a correct interpretation of the case. ~~on which it is based. (Simpson V. Unwin, 37 Revised Reports 359).~~ The defendant was found in possession of some birds on 9th February, having killed them before 1st February, and it was sought to subject him to a penalty prescribed by an act which prohibited every person from taking, killing or having in his possession between the 1st of February and the 1st day of September any such bird. It was no doubt stated in the judgments that 'if a man may lawfully kill birds on the last moment of the day on the 1st of February, it would be absurd to hold that he would be guilty of an unlawful act by having the same birds in his possession on the 2nd'; but the ratio of the decision was that the provision referred only to living birds.

It is plain that the changes made in the new Regulation as compared with that of 1897 are all directed towards increasing the efficacy of the protection to Mining Property. Section 12 relating to the possession of unwrought gold, of which a definit

tion

to be void. But the court held 'that the words of the bye-law must receive a reasonable construction, and that a condition - that the freemen of the company who are called to the livery mu be such freemen only as are eligible by law, is necessarily to be implied by such bye-law'.

Moreover I am not quite sure whether the definition of - 'unwrought gold' really includes such cases as the present one When getting gold jewels made of goldsmiths, it is usual for - their employers to take a small piece of the melted gold with - them as a tally to indicate the quality of the gold given for the work. Sometimes it also happens, that some remnant which cannot be incorporated in the jewel comes to the possession of the owner at the time of making it. It is most unlikely that the Legislature would have left such ordinary cases unprovided for, if - they meant section 12 to be extensively interpreted. Moreover the terms 'bar gold' & 'gold bullion' seem to be terms with some technical import in the language of the trade, though I have not been able to obtain an accurate definition of them. If so, the other words following them must be interpreted to be of the same class; and it is a question worthy of attention whether gold - which ~~have~~ has once from its ~~re~~ native state been converted into -- jewellery or other articles of use or commerce, can again become 'unwrought gold' merely because without losing its identity, it has been broken up or melted into an ingot. Various difficulties would arise from giving it an extended signification so as to - include such gold within the term. It is however unnecessary to express a definite opinion on this matter, as the meaning that I attach to section 12 renders it unnecessary to do so in this case.

As I agree with the conclusion arrived at by my learned colleague though on different grounds, the conviction and sentence passed on the accused are set aside. The fine if paid already will be refunded, and the piece of gold returned to him.

'True copy'
S. Rajagopalachari
Registrar.

S.R.

Dr. Smeeth's proposal and reasons therefor.

Assistant Secretary's proposals.

Section 3 (9)

In the definition of a Goldsmith it will be necessary to omit the -- words -- "by profession".

If as hereafter provided a person who is not a goldsmith may be permitted to possess unwrought gold it will be necessary to make it unlawful for such person to melt, refine or work in gold or silver. Unless this is done the object of the Regulation in regard to supervision or control of the melting etc of unwrought gold would be largely frustrated. It would give -- the general public endless opportunities of carrying on an illicit traffic which the goldsmiths' licenses, -- Registers etc are designed to prevent. Whatever opinion may be held about the mere possession of unwrought gold by the general public, there can be no hardship in denying such persons the right to melt, refine or work the --- the material and to insist that they shall in all cases get such work done by a licensed goldsmith. As the Section stands at present a man might melt gold without a license and claim that he was not doing so "by profession" but merely privately and casually. These words should therefore be omitted.

Dr. Smeeth suggests that the words "by profession" be omitted in the definition of Goldsmith". As pointed out by him, there seems to be no hardship to the public by this omission as the melting, refining and works of that kind are done generally not by laymen but by professional goldsmiths. The omission will further remove the distinction that may be drawn now between melting etc by a person who is a goldsmith by profession and one who is not so, for which there seem to be no reason whatever.

The words "by profession" may be omitted

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Section 7.

In consequence of the foregoing amendment it would be desirable in order to avoid ambiguity to substitute for the words "not to carry on the profession of a goldsmith" -- the words - "nor to engage in any goldsmith's work"

If certain persons are to be permitted to be in possession of unwrought gold it will be necessary to permit them to sell it if they want to do so and therefore the words -- "or sell " will have to be struck -- out of this section.

The proposal of Dr. Smeeth to substitute the words "nor to engage in any goldsmith's work" for the words "nor to carry on the profession of a goldsmith" in this section is only consequential on the proposed amendment of section 3, sub-section 9).

Section 10.

In this connection it may perhaps be considered whether the words "at his place of business" occurring in sub-sections (1) and (2) are appropriate. They would indicate that it is only goldsmiths and gold dealers by profession that are required to keep the books prescribed therein and not others who occasionally purchase gold or engage in goldsmith's work. If this is what is intended to provide for, the sub-sections do not require any alteration.

I do not think that any change is necessary.

If on the other hand, every person who sells gold or or engages in goldsmith's work should keep a register the -- words "in his place of business" may perhaps be omitted. Dr. Smeeth has not been consulted regarding this suggestion.

Section 12.

After the words "any person" it will be necessary to interpolate the words - "except as provided hereafter in sections 12(a), (b)" and for the - new sections to be added, I would propose the following:-

This section renders unlawful the possession of unwrought gold without a gold-dealer's or goldsmith's license. Strictly construed, the possession of such gold without the prescribed license is unlawful though the gold might have been obtained long before the passing of this Regulation. Dr. Smeeth considers that to afford complete protection to mining property, the possession of unwrought gold by the general public should be absolutely prohibited. In the event however of Government not accepting this view and deciding to permit possession of unwrought gold by the general public, he suggests the issue of permits and has proposed the addition of some sub-sections to section 12.

The insertion of the words proposed by him in sub-section 12 is unobjectionable.

Section 12(a).

Provided that any person who may be in legitimate possession of unwrought gold at the time this Regulation comes into force or who may, at any subsequent time, come into possession of unwrought gold ~~by inheritance or succession or~~ by way of legacy may be permitted to retain possession of the same under cover of a permit as provided hereafter."

The insertion of the words "by inheritance or succession or" before the words "by way of legacy" in this section seems necessary as unwrought gold may be acquired by ~~any~~ *any* of these means. The words "be permitted to" in "may be permitted to retain" seem unnecessary.

Sections 12(b) to(d)

These may be recast so as to correspond as nearly as possible with sections 8 and 9 -- which are similar to them.
I would propose the following:-

Section 12 (b).

A permit for the possession of unwrought gold may be granted by a magistrate of the 1st class to any person of good character and reputation provided that the Magistrate is satisfied that the said gold has been honestly acquired and that its ~~pos-~~

A permit for the possession of unwrought gold may be issued by a magistrate of the 1st class on payment of such fee as the Government may by rule prescribe in that behalf.

.ts possession by the said person is
n accordance with the provisions of
:his Regulation and provided also
:hat the application for a permit has
)een made without undue delay.

Section 12 (c).

For each permit granted a fee of say 8 annas) - shall be charged
.nd a description of the gold with
.he weight thereof shall be entered
.n the Permit by the Magistrate,

If at any time the gold referred
:o in the permit is parted with or
.ltered in any way the Permit shall
)e immediately returned to the issuing Magistrate
:ho shall cancel the same or alter it
.s the case may be.

The Permit shall be in such form as may be prescribed by Government and shall contain a description of the gold with the weight thereof.

If at any time the gold referred to in the Permit is parted with or altered in any way, the permit shall be immediately returned to the Magistrate by whom it was issued, who shall cancel the same or alter it as the case may be

A Register of Permits shall be maintained by every Magistrate issuing the same and all permits granted, cancelled or altered by him shall be entered therein.

Section 12 (d).

The Permits referred to in the preceding sections shall be in such form as Government may prescribe and every magistrate shall maintain a ---

No permit shall be issued to any applicant unless the magistrate is satisfied that he is a person of good ----

19

a Register of all Permits granted, cancelled or altered by him.

good character and reputation, that the gold in respect of which the application is made has been honestly acquired and its possession by the said person is in accordance with the provisions of this Regulation, and that the application for the Permit has been made without undue delay.

Every decision under this sub-section by a magistrate other than the District magistrate shall be appealable to the District Magistrate whose order shall be final.

NOTE.-- In connection with this sub-section, it may be considered whether in order to obtain a permit, it is necessary to insist on the qualification that the applicant should be a person of good -- character and reputation. The provision as regards appeal is not contained in Dr. Smeeth's draft but it seems to be a necessary one and is therefore inserted.

Para 12 ((e).

Provided also that any person, not being a licensed goldsmith or -- gold

This may more aptly come next to 12 (a). Dr. Smeeth suggests

or gold dealer who takes gold or gold jewels to a licensed goldsmith for the purpose of having them melted down and converted into new jewels may be permitted to retain a small check sample not exceeding half a tola in weight of the gold so melted down until the new jewels have ~~bee~~ been completed, after which the said sample and any residue of the gold shall be at once sold or handed over to the goldsmith who has done the -- work in part payment therefor and shall in no case be further retained by the person for whom the jewels have been made.

suggests that the gold retained as sample should be sold or handed over to the goldsmith. It may perhaps be considered whether the owner may not be allowed to retain it on making a declaration before a Magistrate. If this idea be approved Sub-Section (e) would be somewhat as follows:-

" Provided also that any person not being a licensed goldsmith or gold-dealer who gets gold melted for purposes of jewelry may, on making a declaration before a magistrate be permitted to retain a small check sample, not exceeding half a tola in weight of the gold so melted ".

Cr S8.12 to 12 e, See my note on the Office Note.

Inclusion of copper wire under mining material.

The Mining Board requests that in view of the decision of the Chief Court in Criminal Appeal No. 175 of 1906-07, Appellant Mahomed Masthan, all electrical fittings (including copper wire) may be included within the meaning of the definition of "Mining material" given in section 3 subsection(6 of the Mines Regulation. If

If this request be granted, all that will be necessary is to issue a notification under under clause (e) of sub-section (6) of section 3 declaring electrical fittings to be --- "Mining material".

Section 17.

To give effect to the representation of the Mining Board regarding undesirables, the words " the Gold Field " may be substituted for " such mine" after the word "quit" in the second line, and the words "Gold Field" for "Mine" in the 6th line.

K.N.K.